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THE COURT AND THE DELINQUENT CHILD

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The increasing complexities of modern life have placed upon the shoulders of all, adult and child alike, similarly increasing responsibilities. Acts that were indifferent in years gone by are now harmful. The bare competition to live demands a higher culture and more specialized knowledge. The opportunities to derive a livelihood directly from natural resources are rapidly diminishing, and the children of today, the voters of tomorrow, will be forced to a struggle for existence in a more artificial atmosphere created by the intricate civilization of science and city life. Even the rural communities are impressed by new standards of living. The isolation and primitiveness of the farm of a generation ago have passed into the limbo of forgotten things.

New and ever-changing duties and responsibilities have compelled mankind so far as possible to adjust itself thereto. Many have been lost by the wayside, and they present the human elements of our constantly shifting social problems which require continual variations of methods to meet them.

Among the imperfections which during the last twenty years have most insistently thrust themselves upon the attention of social workers is the failure to conserve sufficiently the well-being of children. Particularly, old ideas have proved to be inadequate in the correction of delinquents. Out of the obvious necessity of fitting our social, and more particularly our legal, institutions to their requirements has developed what we know as the "Juvenile Court."

The need was seen long before the cure was discovered, and those more fully aware of the evil attempted its eradication without any clear conception of its true character. Rules of legal procedure and practice, particularly in matters of a criminal nature, were designed for adults and not for children. Jurists having juris-

diction of the causes of children were among the first to discern and deplore the impotency of the courts to deal with them. Men and women, more earnest than competent, sought to produce order out of chaos by establishing children's courts and evolving a system of jurisprudence applicable to juveniles. Their efforts have resulted in making confusion worse confounded. Laws have been enacted more through sentiment than reason, the courts have been poorly organized, and the judges usually have not been qualified. But some good, not to be underestimated, has resulted in that it has brought to the consciousness of people generally the necessity of the enlightened treatment of children guilty of anti-social conduct. The way has also been opened for a closer investigation of childhood's needs, and by reason of the very fact that the courts have proved unequal to their tasks, it may now be seen with comparative clarity what the prerequisites to the successful control of recalcitrant children are.

We know that each case is an individual study and that general laws applicable to all are few indeed. We know that before any rational method for the correction of a child may be found, thorough and scientific investigation of his environment, his physical and mental condition must be made, and all facts of heredity and birth must be in the possession of someone capable of analyzing and interpreting them. Juvenile courts, in order to meet these requirements, have surrounded themselves with corps of psychologists, alienists, physicians, probation officers, and what not, for the purpose of acquainting themselves with all of the ascertainable facts that might be construed to be causative factors of delinquency. They have attempted to establish human laboratories where each child is placed under the microscope of science, to discover even the most minute variation from the normal. But even with all of this paraphernalia, they have found themselves unable to dispose of any single case to the certain satisfaction of those most interested in it. Consequently, juvenile courts are held in suspicion by the layman, in contempt by the lawyer, and regarded with a sense of weakness by the judge. The only conclusion anyone familiar with even the best of them can reach is that in providing machinery for the reformation of incorrigible children, they have failed.

The reasons for this failure are many. Among them are the poorly conceived laws, inadequate equipment both personal and material, and incompetent judges; but by far the most salient reason is that courts are not fundamentally adapted to this work. It is not the legitimate province of a court to investigate the habits of an alleged delinquent to determine whether or not he should be prosecuted, thus pre-judging before trial his guilt or innocence; and much less should it be its duty, after conviction and suspension of sentence, to supervise his conduct, or to determine whether or not he should be brought again into court, thus making the judge the complaining witness, the prosecutor, the jury, and the executioner. Yet, such are the duties imposed upon the juvenile courts by all the "children's codes" in the United States, so far as I know. Under the old belief that a convicted defendant should be punished because he had broken the law, the rendition of judgment in a criminal case, specifying the kind and degree of punishment, was just as truly a function of the court as entering a money judgment in a civil action; because under this theory the sentence was merely retribution to the state against the criminal who had injured it, in the same way that a money judgment was retribution by a defendant to the plaintiff whom he had damaged. But as soon as we vary from this principle and consider the treatment of delinquents from the standpoint of their social rehabilitation, we are departing from the realms of legal procedure to those of governmental policy. Lawyers and judges rightfully resent this institutionalization of courts. The true function of a court is to determine judicially the facts at issue before it; or, in criminal matters, the guilt or innocence of persons charged with crime. Investigations of the lives, environments, or heredity of delinquents, the infliction of punishment, and the supervision of probation institutionalize the courts and are repugnant to every tenet of the science of law.

In the report of the proceedings of a conference on child welfare standards recently held under the auspices of the Federal Children's Bureau, is found the following:

> Every locality should have available a court organization providing for separate hearings of children's cases, a special method of detention for children, adequate investigation for every case, provision for supervision or probation

by trained officers, and a system for recording and filing social as well as legal information. In dealing with children the procedure should be under chancery jurisdiction, and juvenile records should not stand as criminal records against the children. Whenever possible such administrative duties as child-placing and relief should not be required of the juvenile court, but should be administered by existing agencies provided for that purpose, or in the absence of such agencies, special provision should be made therefor; nor should cases of dependency or destitution in which no questions of improper guardianship or final and conclusive surrender of guardianship are involved, be instituted in juvenile courts.

The juvenile victims of sex offenses are without adequate protection against unnecessary publicity and further corruption in our courts. To safeguard them, the jurisdiction of the juvenile court should be extended to deal with adult sex offenders against children, and all safeguards of that court be accorded to their victims.

In all cases of adoption of children, the court should make a full inquiry into all the facts through its own visitor or through some other unbiased agency, before awarding the child's custody.[1]

While this report does recommend that "whenever possible" administrative duties concerning the placing of dependent or neglected children should not be placed upon the court, it emphasizes the duty of the court to make "adequate investigation for every case, provision for supervision or probation by trained officers, and a system for recording and filing social as well as legal information," for delinquents. In order to justify this recommendation it specifies that in "dealing with children the proceedings should be under the chancery jurisdiction, and juvenile records should not stand as criminal records against the children."

All of this means that a child who breaks a law is not a lawbreaker, that a crime is not a crime when committed by a juvenile, and that so far as children are concerned things are not at all what they seem. It is merely an attempt to make a rose smell sweeter by some other name. This fiction that has been exalted to an axiom by juvenile workers illustrates the paradoxical situation in which an attempt to supervise delinquents places the court. Not even under their "chancery powers" have courts heretofore been endowed with administrative authority of this kind. In all the history of legal procedure there cannot be found another instance

[1] *Standards of Child Welfare*, Report from Conference Series No. 1, *Bureau Publication No. 60*, Department of Labor, Washington, 1919, p. 442.

where such conflicting powers and duties have been placed in one tribunal.

This does not mean that the juvenile offender should be treated in the same way that the adult offender is treated, or that there should not be special statutes concerning the punishment and correction of children, or that the laws heretofore in force have been fitting or adequate in their application to childish misconduct. It merely means that the court is not the instrumentality by which these things should be undertaken.

If a better adaptation of our social activities, particularly our legal methods, to the needs of children is imperative, and if the court is not the proper forum to accomplish it, it is fair to ask what agency should be used. Before answering that question, it is well to consider briefly just what the reformation and correction of delinquent children contemplate. It is evident that delinquents may be divided broadly into two classes: first, those who are delinquent on account of unpropitious environments; and, secondly, those who on account of feebleness of mind or body have become misfits in the social order. The second class is not subject to improvement by moral suasion. Incorrigibility resulting from low mentality is not curable by probation. Delinquency resulting from ill health is the concern of the physician, not the probation officer. The mentally and physically unfit, therefore, as soon as their conditions are detected, automatically eliminate themselves from the consideration of the social worker immediately they are placed in proper custody. His supervisory work is limited to the normal child who on account of adventitious circumstances finds himself at cross purposes with the conventions of life. Only the uninformed ascribe anti-social habits to "pure devilment" or "original sin." Incorrigibility is an effect which necessarily presupposes some cause. In the normal child it is an absence of appreciation of his obligations to others. It is induced by some extraneous element which must be found in the home, the school, or the community. This idea was neatly expressed by Professor Randolph as follows:

> Every Juvenile Court case represents, first, the failure of a family to adjust a child to the existing conditions of life; second, the failure of a public school

to offset a family's inadequacy; and, third, the failure of a community to provide an adequate organization of protective agencies to guard its children from growing into anti-social and ruinous habits.[1]

"Anti-social and ruinous habits" in the normal child are the result of failure to train him to observe the conventions of his environment; in other words, a lack of education.

There are as many definitions of education as there are persons who use the word. Vorhees defines it as follows:

> Education is a broad and comprehensive term. It has been defined as the process of developing and training the powers and capabilities of human beings. It is the bringing up, physically or mentally, of a child, or the preparation of a person, by some due course of training, for a professional or business life, or other calling. It may be directed particularly to either the mental, moral, or physical powers and faculties, but in its broadest and best sense it refers to them all.[2]

This is probably as good a definition as any other, for it implies what all suggest: the process of making good citizens, of fitting the young for the responsibilities of life. One who capably and creditably discharges life's duties is a good citizen and an educated person. He cannot be incorrigible. The reformation and correction of delinquent children are, therefore, processes of education. When they cease to be delinquent, they are, to that extent, educated.

Education is specifically the province of the home and school, and by no stretch of imagination that of the court. It is the duty of the community to provide the opportunity for good homes and to establish sufficient schools. If the community has not done so, and neither the home nor the school has taught the child to discharge his obligations to society, then can it be expected that the court, the purposes of which are altogether different, will succeed where they have failed?

Much less can it be expected that the court will be able to accomplish the most essential task of *preventing* youthful wrongdoings. It is elementary that prevention through the wise direction of children before criminal habits have had time to be formed,

[1] "The Farm and the School," *Colorado State Teachers' College Bulletin*, September, 1918, Greeley, Colorado, p. 46.

[2] *Law of the Public Schools*, 1917, Little, Brown & Co., Boston, p. 9, sec. 6.

is the most certain means of eliminating puerile misconduct. It is seldom that the courts are called upon until definite wayward predilections have become fixed. It is then too late to provide the ounce of prevention or avert the need of the pound of cure. The aid of the courts is invariably invoked when the possibilities of success are remote. The juvenile court has discharged its debt when it has destroyed all necessity for its existence. Merely because the natural agencies have often failed is no reason why the courts should be warped to supply a want totally foreign to their genuine objects.

"But what shall we do," someone may ask, "if the home and the school both fail, shall we then abandon all hope for ultimate redemption?"

Certainly not. But if it is expected that the judge of a court, by making him super-child-spanker to the community, will be able to succeed in the face of previous failure, that expectation is doomed to disappointment.

Remodeling inefficient homes into cultured and effective ones is a long course and a discouraging one. Increase in income, provision for wholesome amusement, the teaching of parental obligations, the raising of the standards of living, and a thousand and one other factors may contribute to the betterment of family conditions. The best immediate remedy is to make the school succeed where the home has failed. *The suitable institution to undertake the reformation and correction of incorrigible children is the school.*

Educators may argue that the religious and moral training of children is no part of school work; that the school is essentially interested only in the intellectual development. Whether or not this is theoretically a correct division of responsibilities, it cannot be denied that ethical training is as much a part of education as the teaching of the three R's. If the schools are established to educate the child, then no part of his education can honestly be ignored by them. But even if this arbitrary segregation be tenable, the fact remains that the schools continually, willy-nilly, assume supervision of moral instruction. In a large measure they have been forced to procure treatment for physical ailments and to curb

vicious tendencies, though "weak eyes and bad manners should be taken care of in the home." If they are not taken care of, the school is unable to give the child the full benefit of its instruction. It is necessary to cure weak eyes and to correct bad manners in order to teach geography and grammar effectively. The school has already encroached upon these prerogatives of the home; or, it would perhaps be more precise to say that the home has abandoned them to the school. School physicians and nurses, dental clinics, noon-day luncheons, classes for exceptional children, and many other innovations of recent years emphasize this fact.

If the school is constrained in a measure to extend its activities beyond strictly intellectual teaching, it should be thorough in its expanded office and not haphazard and inconclusive. Concentration in one institution will certainly be more forceful than distribution among several institutions whose duties are sure to overlap and leave fatal gaps, and no one of which covers the whole field.

There is much argument, from the standpoint of the schools, why they should cover this wider field. Many educators and most laymen feel that the schools are not fulfilling their object of "fitting the young to discharge the responsibilities of life." Pupils are constantly falling out of school, because, as they say, they are "getting nothing out of it." Too much attention has been paid to "higher education," and not enough to "common schools." The elementary education of all children is much more important than the "higher education" of a few. Yet in every rural school we find two or three lower grades under one teacher, while there is only one of the upper grades under a teacher. If a new building is projected, it is usually a high school building, not a primary building. These conditions should be reversed. Parent and child should believe that the "grammar grades" are actually teaching things that will be of practical assistance in the everyday routine of life. This cannot be done so long as the common schools are designed merely to prepare students for college. "The sooner schools organize to meet their full responsibilities, the sooner teachers are likely to acquire the measure of public estimation which will justify paying them the wages they want."

In Colorado, the child unruly in school is a juvenile delinquent. The remedial work attempted by the court (necessarily educational) is designed, among other things, to make the child more subservient to school rules. The truant is a juvenile delinquent, and the court is called upon to compel his attendance in school. Practically every case of delinquency involves school children, their conduct in school, and their formal education. The judge, to make his orders at all coercive, must have the close co-operation of the schools, and practically the only fruitful results he accomplishes are through that co-operation. If the schools have, as I believe they have, potentially all the attributes necessary to carry on the juvenile work, then by all means let it be confined to them. It is wasteful to pile institution upon institution.

True, the schools are not at the present equipped to carry on this task. Neither, for that matter, is the court. The schools may be so equipped; the court never can be, if it retains its true form. In order to supply the deficiencies, many changes will have to be made in the pedagogical system. Without any attempt to discuss them exhaustively, it may be well to mention a few. There should be a county-wide centralization of school control in one body with power, among other things, to direct the duration and seasons of sessions, the curriculum, the placing of teachers, the enforcement of the compulsory education law, the designation of textbooks, and the discipline of pupils. There should be connected with this unified body, a complete organization of scientists and trained workers. The age of delinquency and the school age should be identical. Then, assuming a strict enforcement of the compulsory attendance laws, all normal delinquent children would be in the schools. All state institutions such as reform schools, industrial schools, and training schools for the feeble-minded, should be under the supervision of the State Superintendent of Public Instruction, or the state officer having similar powers, as an integral part of the school system. They should not be under the management of state boards of charities and corrections or penal bureaus. In short, all agencies for the instruction, reformation, correction, and training of children of school age should be subject to school authority.

In the event any child should prove so incorrigible that it should become necessary to commit him to an institution, such commitment should be made by due process of law. No child should be taken from his parents before he has had an opportunity to state his case before an unprejudiced tribunal. It is indispensable, also, that for extreme cases of insubordination, there should be some officer connected with the schools with authority to enter lawful judgments of punishment and commitment, and with power to enforce them when they are made. Here and only here has a court any consistent place in this work. Its jurisdiction then would extend only to the judicial ascertainment of whether or not the child before it is in law a delinquent. If he should be so found, he would be formally remanded to the custody of school officials. If they should believe that he could be helped best by probation, then he would be referred to the school's probation officers. If it were deemed wiser to confine him in an institution, they should have full power to do so. Thus, the court would discharge its lawful office of judicially determining the guilt or innocence of the child, and having so determined, would have performed its every legitimate function.

The jurisdiction to determine these issues could be placed in established courts or in a special court connected with the central school body. It should be presided over by a lawyer, because even a child has a right to an orderly trial and to the protection that the law throws around all persons who are accused of breaking it. Under the present system this is not true. The judge, through the investigations of his officers, has usually decided the case before the wrongdoer has been brought formally into court. Indeed, there is seldom any hearing until it has been determined that it is necessary to sentence. Probably there have been but few instances of injustice, but the possibility always remains, where large property rights or personal interests are involved, that a venal judge might "railroad" an innocent child. Certainly, the means of doing so are present. Possibly the court, on account of its personal acquaintance with children who have been informally before it, is too prejudiced to judge them fairly. The power to take a child bodily from his parents and place him in the custody of strangers

is formidable. The very fact that our institutions are becoming more and more efficient is sometimes a temptation to commit children whose surroundings are not all that they should be. It is unwise to intrust investigation, decision, commitment, and supervision to any one person. There should be the wholesome check that an independent court, presided over by a judge trained in the law and respecting its principles, would have over the too enthusiastic and often wholly biased investigator.

By placing the responsibility of the correction and reformation of incorrigible children in the educational institutions, and limiting the powers of the court to the mere determination of the facts of delinquency, we may anticipate great improvement in the methods of treating incorrigible children. Until this is done, we must "muddle on" as best we can, hoping against hope and courageously striving to overcome insurmountable obstacles.